APPEAL NO. 93144

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On February 3, 1992, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues agreed upon at the CCH were: "(1) Whether claimant was injured in the course and scope of his employment on (date of injury); and, (2) whether claimant has disability related to his alleged injury of (date of injury), and if so, when did it end." The hearing officer determined that the appellant (claimant) failed to prove by a preponderance of the evidence that his injuries, other than some non-specific itching of his skin, arose out of and in the course and scope of his employment on (date of injury), and that claimant failed to establish any disability.

Claimant contends that the hearing officer erred in certain findings of fact and conclusions of law and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The evidence being sufficient to support the findings and conclusions, the decision of the hearing officer is affirmed.

Claimant testified he was a 45-year-old pipe fitter working for (employer herein) at a chemical plant. He states he was in good health prior to (date of injury), when he and a coworker were replacing a flange on a tank. Claimant states he was wearing gloves, a hard hat, protective goggles, and regular work clothes (rather than coveralls). Claimant states that shortly before quitting time, as he was inserting a probe attached to a flange, some brown, black, and white colored fluid splashed out of the pipe, hitting him on his face and body. Claimant testified he experienced a burning sensation on his sides and stinging on his face. He said he immediately went to the shower room where he showered with soap and water for 15 minutes. Claimant states as he was leaving, he saw the company nurse and complained of itching, burning, nausea, and numbness in his hands. Claimant states he received no treatment that evening but went to his hotel (he was working away from home at the time) where he continued to be nauseated, vomited, had numbness and tingling in his head and hands and had blood in his stool. The next morning, claimant states, he was still feeling very sick and returned to the nurse. He testified the nurse put some cream on his hands and face. Claimant states he told the nurse his eyes were "cold" and red. Claimant saw Dr. Cn (Dr. C), D.O. on October 29, 1991 complaining of the same symptoms plus gastritis and diarrhea. A letter report from Dr. C dated 9/14/92 states, ". . . there was an unfortunate exposure to hydrocarbon(s) on 10/26/91. . . ." and further states:

> All of [claimant's] symptoms at this time fall under the diagnosis of `Post Traumatic Stress Syndrome.' The most evident sub-diagnosis

> is that of exogenous depression (acute reactive). This is responding with positive subjective improvement with the use of Prozac qd. Also [claimant's] stress induced gastritis has been most beneficial to [his] convalescence combined with H-2 blockers.

Claimant states Dr. C must have assumed the fluid was hydrocarbon because claimant did not know what it was. Claimant states he has suffered a long list of physical problems because of the exposure and that he was laid off on October 27, 1991 and has not been able to work since.

Claimant was seen by Dr. T (Dr. T), an environmental toxicologist. Dr. T believed claimant was exposed to tributyl, amine cyanide "and other contaminants" which in Dr. T's opinion would cause symptomatology leading to claimant's disability and impairment. Dr. T submitted a detailed toxicological report to support his opinion. It was Dr. T's further opinion that claimant was exposed to tert-butyl amine (TBA). Dr. T concludes:

> It is my scientific opinion that [claimant] suffered a series of acute effects from an accidental exposure to tertiary butyl amine and contaminants, including cyanide.
>
> It if (sic) highly probably, more likely than not, that certain chronic symptoms are linked to the exposure, either directly or indirectly as noted . . . .
>
> The most clearly linked symptoms include the irritation of the eyes (especially right one), shortness of breath upon exertion, urethral stone, weight depression, elevated liver enzyme, lymphocytopenia, gastritis and esophagitis. Other symptoms may be linked indirectly.

Claimant was also seen by Dr. P (Dr. P), a clinical neuropsychologist, who submitted a 17-page report dated August 18, 1992 regarding evaluations of "1/17, 1/21/92" and another 9-page report dated August 31, 1992 commenting on the reports of carrier's doctors, and emphasizing his treatment of claimant's coworker who had had similar complaints. Dr. P strongly disagreed with the carrier's doctors and gave his reasons therefor. Dr. P concludes that claimant has a post-traumatic stress disorder secondary to a chemical spill, major depression, and evidence of "organic brain syndrome."

Claimant offered two reports of laboratory tests which show claimant's liver enzyme SGPT to be elevated and excepts of a booklet to explain that an elevated SGPT would show liver damage.

Carrier's medical evidence consisted of reports, with laboratory studies, from Dr. C (Dr. CM), a medical toxicologist, dated February 2, 1993, and June 8, 1992. The June 8th report includes a detailed history and physical. Dr. CM gives a diagnosis of "Nephrolithiasis by history, rule out gout. Depression, paranoid ideation." Dr. CM concluded:

> There is no clinical evidence of organic brain syndrome manifest by this patient. Hyperuricemia as noted in blood tests is not occupationally related.
>
> The physical evidence supporting exposure is equivocal. There was manifest by this patient only minor skin irritation. The material to which exposure is alleged is a fairly strong skin irritant and respiratory irritant. The patient manifest (sic) no significant skin damage at this time, had minimal skin irritation in connection with the acute exposure and has no significant respiratory component to his alleged dysfunction. There is no reason to suspect that the central nervous system would be a target organ for this particular substance.

In response to the reports of claimant's experts, Dr. CM comments:

> If the exposure had been to any amount of cyanide, the results of the exposure would have been manifest within hours and/or resolved within less than 24 hours. In reasonable medical probability, there was no exposure to cyanide of health consequences. If the exposure had been to tertiary butylamine in concentrations sufficient to cause skin irritation and eye irritation, then that irritation would have resolved in a matter of hours to days, considering the prompt and appropriate decontamination procedures which were undertaken. . . . In reasonable medical probability, there was no significant exposure to tertiary butylamine during the events of 10/26/91.
>
> There is no biological mechanism by which ongoing impairment or clinical manifestations of this patient reasonably could be attributed to the alleged exposure episode of 10/26/91.

Dr. G (Dr. G), a clinical neuropsychologist, reviewed the report of Dr. P and by report of May 1, 1992 states "the diagnosis of organic brain syndrome to be of questionable validity." Dr. G finds ". . . no evidence that TBA has neurotoxic effects."

Carrier also introduced affidavits from Ms C, the occupational health nurse on duty on (date of injury). She states she questioned claimant after the accident and he showed no signs of physical distress or emotional concern and that claimant denied any burning, skin irritation, or redness. The nurse states the next morning claimant complained of some itching but had no visible signs of irritation. The nurse applies some hydrocortisone topical ointment to claimant's skin to address the itching.

Carrier also introduced an affidavit from the employer's foreman who stated he was supervising operations at the time of the incident in question. He stated that he personally checked the pH of the water in the tank after the incident, and checked drainage from the flange and in the drainage ditch and on the clothes worn by claimant. He states the pH reading at each point was 7.0 which indicates a neutral pH.

Carrier introduced an affidavit from a "process operator" who stated he had used normal procedures in flushing and decontaminating the tanks in question. After the incident, this affiant states that he performed a physical inspection of the fluid which had splashed claimant and found the water clear and had no odor. He stated that water which is contaminated with TBA will typically have a slick feeling when tested and that the substance in the tank was "nothing more than filtered water."

Carrier introduced the affidavit of the pipefitter foreman who stated he spoke to claimant shortly after the splash incident and that claimant made no complaints about burning or itching. He stated it was policy that anyone getting splashed with any substance to take a shower and change clothes as a precaution.

Basically this case comes down to a battle of the medical experts. Both claimant and carrier presented evidence from a highly qualified toxicologist and a clinical neuropsychologist. Claimant testified as to how the accident happened, and the symptoms that followed. The carrier presented evidence that the content of the tanks, and fluid that splashed on claimant, was only filtered water. The hearing officer found, among other things, that the liquid with which claimant had been splashed, while wearing gloves, a hard hat, goggles and safety glasses, was not toxic and had a pH of 7.0, or neutral; that claimant had immediately showered after the incident; that claimant complained to a nurse of only nonspecific itching on his skin; that he was not exposed to a toxic chemical; that his liver disorder was not due to the liquid splashed on him and that claimant was not precluded from working due to the nonspecific itching caused from liquid being splashed on him on (date of injury). Based on these and certain other findings, the hearing officer concluded that claimant failed to prove by a preponderance of the evidence that his injuries, other than some nonspecific itching arose out of and in the course and scope of his employment on (date of injury) and that claimant failed to establish that he is unable to obtain and retain employment at wages equivalent to his preinjury wage because of a compensable injury. Claimant expresses disagreement with certain of the findings of fact and conclusions of law,

apparently on the basis of an insufficiency of the evidence.

We disagree with claimant respecting the adequacy of the evidence to support the findings and conclusion. Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence but also of its weight and credibility. An employee seeking workers' compensation benefits for a work-related injury has the burden of proving that the injury occurred in the course and scope of employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). There must be evidence establishing a causal connection between the injury and the employment. Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1980). Claimant had the burden to prove his liver, gastrointestinal and other problems were caused by the liquid which the evidence established splashed on him at work. It seems clear the hearing officer placed more credence in the opinions of Drs. CM and G and, as the trier of act, he was free to do so. Conflicts or inconsistencies in the evidence, including the medical evidence, are matters for the hearing officer to resolve. Highlands Underwriters Insurance Co. v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Amarillo 1973, no writ). Texas Employers Insurance Association v. Campos, 666 S.W.2d 286,289-290 (Tex. App.-Houston [14th Dist] 1984, no writ).

We will not substitute our judgment for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ.). The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re Kings Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge